**DFARS Case 2021-D010**

**Modification of Small Purchase Threshold Exceptions**

**Final Rule**

**PART 225—FOREIGN ACQUISITION**

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**SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION**

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**225.7002 Restrictions on food, clothing, fabrics, hand or measuring tools, and flags.**

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**225.7002-2 Exceptions.**

Acquisitions in the following categories are not subject to the restrictions in [225.7002-1](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI225_70.htm#225.7002-1):

(a) Acquisitions **[not exceeding $150,000]**~~at or below the simplified acquisition threshold~~, except for athletic footwear purchased by DoD for use by members of the Army, Navy, Air Force, or Marine Corps upon their initial entry into the Armed Forces (section 817 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328)).

(b) Acquisitions of any of the items in [225.7002-1](https://www.acq.osd.mil/dpap/dars/dfars/html/current/225_70.htm#225.7002-1), if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. (See the requirement in [205.301](https://www.acq.osd.mil/dpap/dars/dfars/html/current/205_3.htm#205.301) for synopsis within 7 days after contract award when using this exception.)

(1) The following officials are authorized, without power of redelegation, to make such a domestic nonavailability determination:

(i) The Under Secretary of Defense (Acquisition, Technology, and Logistics).

(ii) The Secretary of the Army.

(iii) The Secretary of the Navy.

(iv) The Secretary of the Air Force.

(v) The Director of the Defense Logistics Agency.

(2) The supporting documentation for the determination shall include an analysis and written certification by the requiring activity, with specificity, why alternatives that would not require a domestic nonavailability determinationare unacceptable.

(3) Defense agencies other than the Defense Logistics Agency shall follow the procedures at [PGI 225.7002-2](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI225_70.htm#225.7002-2)(b)(3) when submitting a request for a domestic nonavailability determination.

(c) Acquisitions of items listed in FAR 25.104(a).

(d) Acquisitions outside the United States in support of combat operations.

(e) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities.

(f) Acquisitions of food or hand or measuring tools—

(1) In support of contingency operations; or

(2) For which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2.

(g) Emergency acquisitions by activities located outside the United States for personnel of those activities.

(h) Acquisitions by vessels in foreign waters.

(i) Acquisitions of items specifically for commissary resale.

(j) Acquisitions of incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

(1) Is not more than 10 percent of the total price of the end product; and

(2) Does not exceed the **[threshold at 225.7002-2(a)]**~~simplified acquisition threshold~~.

(k) Acquisitions of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

(l) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. However, in accordance with section 8118 of the DoD Appropriations Act for Fiscal Year 2005 (Pub. L. 108-287), this exception does not apply to fish, shellfish, or seafood manufactured or processed in the United States or fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

(m) Acquisitions of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if⎯

(1) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include⎯

(i) Draperies, floor coverings, furnishings, and bedding (Product or Service Group (PSG) 72, Household and Commercial Furnishings and Appliances);

(ii) Items made in whole or in part of fabric in ~~Product or Service Group (~~PSG~~)~~ 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(iii) Upholstered seats (whether for household, office, or other use); and

(iv) Parachutes (~~Product or Service Group (~~PSG~~)~~ 1670); or

(2) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(n) Acquisitions of chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country. (See [225.003](https://www.acq.osd.mil/dpap/dars/dfars/html/current/225_0.htm#225.003)(10) and the requirement in [205.301](https://www.acq.osd.mil/dpap/dars/dfars/html/current/205_3.htm#205.301) for synopsis within 7 days after contract award when using this exception.)

(o) Acquisitions that are interagency, State, or local purchases that are executed by DoD as a result of the transfer of contracts from the General Services Administration or for which DoD serves as an item manager for products on behalf of the General Services Administration. According to section 897 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), such contracts shall not be subject to requirements under chapter 148 of title 10, United States Code (including 10 U.S.C. 2533a), to the extent such contracts are for purchases of products by other Federal agencies or State or local governments.

**225.7002-3 Contract clauses.**

Unless an exception at [225.7002-2](https://www.acq.osd.mil/dpap/dars/dfars/html/current/225_70.htm#225.7002-2) applies—

(a) Use the clause at [252.225-7012](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7012), Preference for Certain Domestic Commodities, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

(b) Use the clause at [252.225-7015](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7015), Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that exceed the **[threshold at 225.7002-2(a)]**~~simplified acquisition threshol~~d that require delivery of hand or measuring tools.

(c) Use the clause at [252.225-7006](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7006), Acquisition of the American Flag, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the acquisition of the American flag, with an estimated value that exceeds the **[threshold at 225.7002-2(a)]**~~simplified acquisition threshold~~.

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**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES**

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**252.225-7012 Preference for Certain Domestic Commodities.**

As prescribed in [225.7002-3](https://www.acq.osd.mil/dpap/dars/dfars/html/current/225_70.htm#225.7002-3)(a), use the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (**[APR 2022]**~~MAR 2022~~)

(a) *Definitions.* As used in this clause—

“Component” means any item supplied to the Government as part of an end product or of another component.

“End product” means supplies delivered under a line item of this contract.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia

Austria

Belgium

Canada

Czech Republic

Denmark

Egypt

Estonia

Finland

France

Germany

Greece

Israel

Italy

Japan

Latvia

Lithuania

Luxembourg

Netherlands

Norway

Poland

Portugal

Slovenia

Spain

Sweden

Switzerland

Turkey

United Kingdom of Great Britain and Northern Ireland.

“Structural component of a tent”—

(~~i~~**[1]**) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs);**[ and]**

(~~ii~~**[2])** Does not include equipment such as heating, cooling, or lighting.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag vessel” means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

(3)(i) Tents and structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply—

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation ~~(FAR)~~, or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

(i) Is not more than 10 percent of the total price of the end product; and

(ii) Does not exceed the **[threshold at Defense Federal Acquisition Regulation Supplement 225.7002-2(a)]**~~simplified acquisition threshold in FAR part 2~~;

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

(5) To chemical warfare protective clothing produced in a qualifying country; or

(6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include⎯

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract—

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

(End of clause)